

Gupta / Wessler

Issues & Appeals

December 6, 2024

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94119-3939

Re: Response to The Geo Group's 28(j) letter regarding *United States v. King County Nwauzor/State of Washington v. The Geo Group, Inc.*, Nos. 21-36024 & 21-36025

Dear Ms. Dwyer:

This Court's recent decision in *United States v. King County* only further demonstrates that intergovernmental immunity provides no basis for GEO to avoid paying its workers minimum wage, just like any other private company that operates in Washington. --- F. 4th ---, 2024 WL 4918128 (9th Cir. Nov. 29, 2024). *King County* held that a local government's executive order that explicitly prohibited companies from providing services to ICE ran afoul of intergovernmental immunity. The Court explained that states and localities may not prevent the federal government from hiring the contractors of its choice, nor may they treat companies differently simply because they perform work for the federal government. *Id.* at *9–*11.

At the same time, however, the Court reiterated the longstanding principle that intergovernmental immunity does not bar the nondiscriminatory application of generally applicable laws—even if applying those laws “indirectly increases costs for the Federal Government.” *Id.* at *10. It also reiterated that whether a state law is discriminatory “depends on how the State has defined the favored class.” *Id.* Thus, the Court explained, the problem with the *King County* executive order was that it did not prohibit companies from servicing *all* flights with the potential to disrupt airport operations; it singled out immigration flights on behalf of the federal government. *See id.*

This case is the opposite of *King County*. The workers here do not seek to enforce a law that singles out the federal government. They seek to enforce Washington's Minimum Wage Act, a paradigmatic, generally applicable statute that for over sixty years has required private companies in the state of Washington to pay their workers minimum wage. *See Nwauzor v. The Geo Grp., Inc.*, 540 P.3d 93, 99 (Wash. 2023); Supp. Br., ECF 124, at 25–28. Under *King County*—and every intergovernmental immunity case that preceded it—GEO cannot avoid its obligation to pay its workers simply because it contracts with the federal government.



Issues & Appeals

Respectfully submitted,

/s/ Jennifer D. Bennett

Jennifer D. Bennett

*Counsel for Plaintiffs-Appellees Nwauzor &
similarly situated workers*